

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

ORDER

Plaintiff,

v.

04-cr-139-bbc

DRAE BROADNAX,

Defendant.

Defendant has filed a notice of appeal of this court's order of June 4, 2010, denying his motion under 18 U.S.C. § 3582. He has not paid the \$455 fee for filing his notice of appeal, which is required if he is to take an appeal from the denial of a § 3582 motion. Therefore, I construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. Defendant's motion will be denied because I find that defendant's appeal is not taken in good faith. Defendant filed two motions under § 3582, both of which were denied. He filed an untimely appeal of the first order. As I have explained in previous orders, defendant is not eligible for a sentence reduction under § 3582 because his sentence was determined by his status as a career offender and not by drug quantity. His argument to the contrary is without any foundation.

Because defendant wants to raise a legally frivolous argument on appeal, I must certify that his appeal is not taken in good faith.

Under Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that defendant Drae Broadnax's request for leave to proceed in forma pauperis on appeal from this court's order of June 4, 2010 is DENIED. I certify that defendant's appeal is not taken in good faith.

Entered this 30th of June, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge